



# Ex Parte Logistics Effective 1/1/17



## California Public Utilities Commission

February 2017

Preliminary; subject to outcome of formal proceeding and Office of Administrative Law approval



# Disclaimer

This interim guidance is subject to the outcome of the formal proceeding and Office of Administrative Law approval of modifications to the CPUC's Rules of Practice and Procedure. Its purpose is to provide CPUC stakeholders with workable practices and procedures until the formal rules modification process is complete.

**Initial discussion of proposed rules modification:**

**Policy & Governance Committee**

**3/8/2017, 10:30 a.m.**

**CPUC Auditorium**

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# Statutory basis

- Old rules created by Legislature in SB 960, Ch. 866, Stats. 1995, PU Code §§1701.1-1701.3
- New rules revised by Legislature in SB 215 (Leno), Ch. 807, Stats. 2016
- Ex parte Rules are in Article 8 of CPUC Rules of Practice and Procedure. Rules and rule numbering will be changing as Commission implements SB 215



# Where do ex parte rules apply?

Applicability depends on:

- Category of proceeding
  - Adjudicatory – banned, but report if it happens
  - Quasi-legislative – allowed without restriction
  - Ratesetting - allowed subject to restrictions and reporting requirements
  - Decisionmaker may craft different rules in specific proceedings
- Proceeding type and timing

**NEW:** Ex parte rules apply regardless of the need for hearing

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# What is an ex parte communication?

Any oral or written communication between a decisionmaker and an interested person concerning any matter in a formal proceeding before the commission that the Commission has not specified in its Rules of Practice and Procedure as being a procedural matter and that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. The commission shall specify in its Rules of Practice and Procedure, enacted by rulemaking, the types of issues considered procedural matters under this article.



# What is a substantive issue?

- An issue that will be addressed or decided in the proceeding.

- **NEW:** Communications regarding the assignment of a **Commissioner**



# What is a procedural issue?

**NEW:** Commission is required to develop a rule defining “procedural”. Proposal to be discussed at 3/8/2017 Policy & Governance Committee meeting:

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"Procedural matter" means:

- (i) an inquiry regarding the proceeding schedule, location or format of a hearing, general Commission practice, or the requirements of the Rules of Practice and Procedure;
- (ii) an emergency request for a specific procedural action, so long as the parties are included in the communication; or
- (iii) a matter pertaining to an intervenor compensation notice of intent or request for compensation.



# Who is an interested person?

1701.1(e)(1)(B) “Interested person” means:

(i) Any applicant, an agent or an employee of the applicant, or a person receiving consideration for representing the applicant, or a participant in the proceeding on any matter before the commission.





# Interested person (cont'd)

(ii) Any person with a financial interest, as described in Government Code 87100/87103, in a matter before the commission, an agent or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest.

**NEW:** A person involved in issuing credit ratings or advising entities or persons who invest in the shares or operations of any party to a proceeding is a person with a financial interest.



## Interested person (cont'd)

(iii) A representative acting on behalf of any civic, environmental, neighborhood, business, labor, trade, or similar organization who intends to influence the decision of a commission member on a matter before the commission.



# Who is a “decisionmaker”?

Communications with Advisors not subject to “equal time” rule which requires that Commissioner meet with all parties to a ratesetting proceeding if s/he meets with one interested person.

**NEW:** Commissioners, their Legal/Policy Advisors, ALJ Management, and assigned ALJ are all decisionmakers (1701.3(h)(2))

Advisors included in ban on meetings with decisionmaker less than 3 working days before Commission meeting at which matter is scheduled for decision.



# What is a Public Forum?

- A public hearing, workshop noticed by ruling or order in the proceeding, or on the record of the proceeding.



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# How are conferences treated?

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**NEW:** (7) (A) Ex parte communications that occur at conferences and that are within the scope of an adjudication or ratesetting proceeding shall be subject to the requirements of this article.

(B) Ex parte communications that occur at conferences and that are within the scope of a quasi-legislative proceeding shall be governed by the ex parte communication disclosure requirements developed by the commission.

(C) “Ex parte communications that occur at conferences” includes, but is not limited to, communications in a private setting or during meals, entertainment events, and tours, and informal discussions among conference attendees. 1701.1(e)(7).



# Ex parte rule - adjudicatory proceedings

- Adjudicatory proceedings are enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission and complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenged the reasonableness of rates or charges past, present or future.
- Check the docket card!
- Ex parte communications are **prohibited** in adjudicatory cases

**NEW:** If an ex parte communication occurs that is prohibited, it nonetheless must be reported

Decisionmakers other than ALJs may not engage in procedural communications in adjudicatory proceedings



# Ex parte restrictions – ratesetting proceedings

- Ratesetting proceedings - Commission sets or investigates rates for a utility(ies), or establishes a mechanism that sets rates for a specifically utility. Includes complaints that challenge the reasonableness of rates or charges.
- All-party meetings with Commissioners permitted with 3 **working** days advance notice to parties.
- Individual oral communications with Commissioners permitted if 3 working days advance notice to parties and all other parties get equal time opportunity.
- Written communications permitted if concurrently served on the service list



# Ex parte restrictions – ratesetting proceedings (cont'd)

- **NEW:** No individual ex parte meetings shall be held during the three business days before the commission's scheduled vote on the decision.1701.3(h)(2)
  - Effect: No oral/in person ex parte communications during Commission meeting week, if meeting is on Thursday
  - Includes advisors, now defined as decisionmakers





# Ex parte in ratesetting proceedings – process for setting an individual meeting

- Request meeting using Commissioner online form

**NEW:** Plan ahead due to 3 working day advance notice requirement and bar on meetings during Commission meeting week

Serve notice of granted request at least 3 working days before the meeting

CC notice to decisionmaker ex parte address:

[Picker.Exparte@cpuc.ca.gov](mailto:Picker.Exparte@cpuc.ca.gov), [Randolph.Exparte@cpuc.ca.gov](mailto:Randolph.Exparte@cpuc.ca.gov),  
etc.



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## Ex parte – ratesetting proceedings– process for setting an individual meeting (cont'd)

- Meeting request is a public record

### **NEW:**

- Determine who will attend and do not change attendees
- Must file notice within 3 working days after meeting.
- Decisionmaker will also file notice
- CC service of notice to decisionmaker email:  
Example: [Picker.Exparte@cpuc.ca.gov](mailto:Picker.Exparte@cpuc.ca.gov), etc.



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## **Ex parte rule - quasi-legislative proceedings**

- Quasi-legislative cases - Establish policy; may include rulemakings and investigations that may establish rules affecting an entire industry.
- Ex parte communications in quasi-legislative proceedings are permitted and not subject to reporting.



# Multiple categorizations

- A proceeding may have different categorizations for different phases.
- This may be determined in an OII, an OIR or a Scoping Memo.
- However, a proceeding has only one categorization unless specifically delineated.
- To determine the categorization in these cases check docket card



# Reporting Ex Parte Communications

1. All written ex parte communications must be served to the related service list concurrently to the communication being sent to a decisionmaker
2. Individual oral ex parte communications must be reported in an ex parte notice by the interested party and **decisionmaker**

## **NEW:**

3. Written communications that are concurrently served need not be reported with an ex parte notice
4. Communications at all-party meetings need not be reported with an ex parte notice



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# Reporting Ex Parte Communications (cont'd)

## **NEW:**

- Requires reporting of communications both by decisionmaker and interested person. Commission shall develop “one-way communications” ban.  
1701.1(e)(2)(A).
- Amends the required advance notice of all-party ex parte meetings and reporting of individual ex parte communications to 3 working days as opposed to 3 days.



# Enforcement

## **NEW:**

- 1701.1(e)(2) The commission shall by rule adopt and publish appropriate sanctions for noncompliance with any rule proscribing ex parte communications.





# Enforcement (cont'd)

## **NEW:**

- 1701.1(e)(3)(C) If the interested person who participated in the communication has not timely submitted the notice, the decisionmaker shall refer the matter to the attorney for the commission, and an assigned commissioner, by ruling, shall order the interested person to submit the required notice. The interested person shall be subject to any applicable penalties for the initial violation and, if the interested person does not submit the required notice within the time period specified in the assigned commissioner's ruling, the interested person shall be subject to continuing violations pursuant to Section 2108.





# Enforcement (cont'd)

## **NEW:**

- 1701.6. (a) In addition to any penalty, fine, or other punishment applicable pursuant to Chapter 11 (commencing with Section 2100), the commission may assess civil sanctions upon any entity or person, other than a decisionmaker or employee of the commission, who violates, fails to comply with, or procures, aids, or abets any violation of, the ex parte communication requirements of this article or those adopted by the commission pursuant to this article. The civil sanctions may include civil penalties, adverse consequences in commission proceedings, or other appropriate commission orders directed at the entity, person, or both the entity and person, committing the violation.



# Enforcement (cont'd)

## **NEW:**

- If an ex parte communication is not disclosed as required by this subdivision until after the commission has issued a decision on the matter to which the communication pertained, a party not participating in the communication may file a petition to rescind or modify the decision.
- The party may seek a finding that the ex parte communication significantly influenced the decision's process or outcome as part of any petition to rescind or modify the decision.
- The commission shall process the petition in accordance with the commission's procedures for petitions for modification and shall issue a decision on the petition no later than 180 days after the filing of the petition. 1701.1(e)(6).



**Q&A**

***Thank you for attending!***

**Commissioner Committee pages:**

**<http://cpuc.ca.gov/commissionercommittees/>**